

# **EXHIBIT 4**

30(b)(6)  
Norfolk Railway - February 19, 2020

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

CSX TRANSPORTATION, INC., )  
Individually and on behalf )  
of NORFOLK & PORTSMOUTH )  
BELT LINE RAILROAD )  
COMPANY, )  
                        )  
Plaintiff, )  
                        )  
V.                      ) NO. 2:18cv530  
                        )  
NORFOLK SOUTHERN RAILWAY )  
COMPANY, NORFOLK & )  
PORTSMOUTH BELT LINE )  
RAILROAD COMPANY, JERRY )  
HALL, THOMAS HURLBUT, )  
PHILIP MERILLI and CANNON )  
MOSS, )  
                        )  
Defendants. )

30 (b) (6) DEPOSITION UPON ORAL EXAMINATION OF  
NORFOLK SOUTHERN RAILWAY COMPANY by its designee  
KENNETH JOYNER

TAKEN ON BEHALF OF THE PLAINTIFF

Virginia Beach, Virginia

February 19, 2020

1           A     No. Unfortunately for Norfolk Southern  
2 there's not a range on the amount that a truck can move  
3 a container.

4                 I guess the key goal as a railroad is  
5 that we need to be competitive with that mode of  
6 transportation, whatever the length of distance is.

7           Q     I understand there may not be a limit on  
8 how far a truck can go, but is it fair to say that most  
9 trucking would occur within a certain geographic range  
10 of the port facility?

11          A     I would say that rail is more competitive  
12 with truck and can more easily compete with truck when  
13 it's a longer haul.

14          Q     And can I ask you to unpack that term  
15 "longer" and, you know, what kinds of distance in your  
16 assessment does rail become a more competitive option  
17 than trucking working out from a port?

18          A     Sure.

19                 Well, just the assets involved to move a  
20 train into an inland point. Initially those first few  
21 miles are quite expensive because you have an engine  
22 and several railcars, amount of diesel fuel, et cetera,  
23 that you have to have on. Once you get over, say,  
24 500 miles in distance, rail is much more -- has a  
25 better chance of competing with truck.

1                   Q         And is another way to say that that after  
2 500 miles, rail can be a more efficient option than  
3 using trucking?

4                   A         It's fair to say it can be a more  
5 efficient option, but it really depends on the market  
6 conditions at any given time, fuel prices, a variety of  
7 factors. If you're in a soft trucking market, truck  
8 can be -- truck can still be competitive beyond that  
9 distance.

10                  MS. REINHART: Counsel, just to be clear,  
11 are you asking these questions now of him in his  
12 capacity as corporate representative or in his personal  
13 capacity?

14                  MR. HATCH: I'm including both of those  
15 capacities. So if we need to distinguish again for the  
16 answer, please, either the witness or you are welcome  
17 to weigh in. I'm not trying to confuse the record, but  
18 I do ask the questions in both capacities.

19                  MS. REINHART: Okay.

20                  THE WITNESS: The answer I gave is from  
21 my experience in working at Norfolk Southern in this  
22 capacity and that's what I have seen in my time there.

23 BY MR. HATCH:

24                  Q         Okay. Some of the prominent East Coast  
25 ports would include the New York, New Jersey port; is

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1                   Q     And does Norfolk Southern consider the  
2 NPBL to be a rail competitor?

3                   A     No.

4                   Q     And what's the function of NPBL?

5                   A     I can tell you to the -- to the best of  
6 my knowledge, the function of the NPBL is essentially  
7 they are providing a service to the class ones as a  
8 switch operator locally.

9                   Q     And the two local class ones would be  
10 Norfolk Southern and CSX; is that correct?

11                  A     That's correct, yes.

12                  Q     And to your knowledge, do both  
13 Norfolk Southern and CSX use the Belt Line for its  
14 switching services?

15                  A     I believe that is the case, but I  
16 actually -- I haven't worked in a business unit where  
17 Norfolk Southern used the Belt Line. But I know from  
18 talking to others that we do, but I don't actually  
19 recall the specific businesses that we use it for.

20                  Q     Okay. So the business line that you work  
21 in is the intermodal business line.

22                  So I take it then that Norfolk Southern  
23 does not use NPBL for switching services for intermodal  
24 freight?

25                  A     Not to my knowledge, no.

1                   Q         Okay. Do you know what the difference in  
2 market share is? And if it's changed over time, you  
3 can --

4                   A         It varies. It changes over time.

5                   Q         Okay. On the first page of this  
6 document, you are writing Mr. Heller. And at the  
7 second sentence, you say, "It's difficult to tell  
8 whether NS is losing market share to CSX in either  
9 Hampton Roads or New York, New Jersey. However, we can  
10 deduce that since the raising of the Bayonne Bridge  
11 some NS customers have shifted volume from  
12 Hampton Roads to New York, New Jersey."

13                  Do you see that?

14                  A         Yes.

15                  Q         And where is the Bayonne Bridge?

16                  A         The Bayonne Bridge is in Bayonne,  
17 New Jersey, and it connects Bayonne to Staten Island.

18                  Q         And was that an infrastructure change  
19 that was made to accommodate increased port volume in  
20 that New York, New Jersey port area?

21                  A         The raising of the Bayonne Bridge was  
22 made to accommodate larger ships.

23                  Q         Are those the Supermax ships?

24                  A         I don't know that you would call them  
25 Supermax, but the kind of larger vessels that are

1 coming in to the ports now.

2 Q Okay. And is that in connection with the  
3 expansion of the Panama Canal that enables those  
4 vessels as well?

5 A It is in connection with the expansion in  
6 the Panama Canal and -- yes, that's correct.

7 Q You say here, "We can deduce that since  
8 the raising of the Bayonne Bridge, some NS customers  
9 have shifted volume from Hampton Roads to New York,  
10 New Jersey."

11 In saying that, are you saying that they  
12 are shifting volume to Norfolk Southern at that  
13 location or that they are -- well, I'll stop there.

14 Are you saying that they are shifting  
15 volume to Norfolk Southern at New York, New Jersey?

16 A We're saying that Norfolk Southern  
17 customers have shifted volume from Hampton Roads to  
18 New York, New Jersey since the raising of the Bayonne  
19 Bridge.

20 Q Okay. And -- but do you know whether  
21 that was a shift that would then go to Norfolk Southern  
22 or could that be a shift that could go to  
23 Norfolk Southern or CSX at New York, New Jersey?

24 MS. REINHART: Objection to the form.

25 THE WITNESS: It could go to either